THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 12th day of September,2007

W.P.No.33991 of 1997

Between:-

N.Siva Surya Kumar & others … Petitioners

and

A.P. Fisheries Corporation Limited,
Tank Bund Road, Hyderabad, rep. by its
Managing Director and another … Respondents

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ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the respondents in denying gratuity and other additional benefits under the Voluntary Retirement Scheme to the petitioners for the period for which they have worked in the 1st respondent-Corporation on temporary basis and also denying Dearness Allowance to them while settling the benefits under VRS as arbitrary and illegal.

It appears, all the petitioners were employed by erstwhile A.P. Fisheries Corporation Limited, Tank Bund Road, Hyderabad. In anticipation of closure of the Corporation, the Management had introduced VRS and all the petitioners opted for the same, received the benefits and left the organization. Now it is their grievance that while computing the benefits under the Voluntary Retirement Scheme, the respondents have not calculated the service rendered by them on temporary basis before their services were regularized in the Corporation and thus they were denied the gratuity, additional benefits, D.A. etc.

Learned counsel for the petitioners stated that whether it is temporary service or daily wage service, once the petitioners worked for more than 240 days in a year, they are entitled for gratuity at the rate of 15 days salary for each completed year of service. All the petitioners had put in more than 3 to 4 years of temporary service

before their services were regularized in the Corporation. Whereas, while computing the benefits under the VRS, the temporary service rendered by them was not taken into consideration and as such, the petitioners were denied the gratuity and other additional benefits.

Whereas, Sri M.P. Chandramouli, learned counsel appearing for the 1st respondent, strenuously contended that the petitioners have accepted the conditions of VRS and having received all the benefits, they cannot raise a dispute now. In fact, it amounts to estoppel; particularly when no protest was made by them while receiving the benefits under VRS.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

Though several benefits including the gratuity, Dearness Allowance were said to have been denied to the petitioners, now the learned counsel for the petitioners has fairly limited his claim to the benefits under the Payment of Gratuity Act said to have been denied to the petitioners. Section 2(e) defines the word 'employee', which reads as under:

> " 'employee' means any person other than an apprentice employed on wages, not exceeding two thousand and five hundred rupees per mensem, or such higher amount as the Central Government may, having regard to the general level of wages, by notification specify, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied…"

Section 2-A defines 'continuous service' as under:

> "**2-A Continuous service:-** For the purpose of this Act—
>
> (1) An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service including service which may be interrupted on account of sickness, accident, leave,

absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or any interrupted service was rendered before or after the commencement of this Act:

(2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for period of one year or six months, he shall be deemed to be in continuous service under the employer—

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i)…….

(ii) two hundred and forty days in any other case"

A combined reading of the said provisions would indicate that the Payment of Gratuity Act does not differentiate a temporary service or service rendered on daily wage basis or permanent service. What all it says is that for every completed year of service, the employee is entitled for 15 days salary as gratuity. Of course, no details as to the exact service rendered by the petitioners are made available by them. Even the respondents have not furnished the details, except saying that the petitioners are not entitled for any benefits under the Payment of Gratuity Act for the temporary service rendered by them in the Corporation.

In the circumstances, I am of the opinion that since the Payment of Gratuity Act does not differentiate between a temporary service or casual service or permanent service for the purpose of extending the benefits under the said Act, petitioners are entitled for gratuity for the service rendered by them, even as temporary employees/daily wagers

in the Corporation. Therefore, the respondents are directed to verify the service particulars of the petitioners before their services were regularized and extend the benefits under the Payment of Gratuity Act and pay the same to them. This exercise shall be completed within a period of three (3) months from the date of receipt of a copy of this Order.

With the above directions, the Writ Petition is disposed of. No order as to costs.

12-9-2007

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